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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,199	03/04/2002	Michael Albert Snyder	AA425F	9259

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/24/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/070,199

Applicant(s)

SNYDER ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --
Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

DETAILED ACTION

1. The examiner construes the phrase "low melting point oil" in instant claim 5 to mean an oil having a melting point less than 25⁰ C, as defined by applicant on page 19, lines 15-17 of the instant specification.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

4. The use of the trademarks "Pemulene", "Carbopol", etc (see page 5 of the instant specification) have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

5. Claim 7 is objected to because of the following informalities: The phrase "additional viscosity modifier" should be amended to recite "viscosity modifier", since claim 1 does not contain a first viscosity modifier. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The phrase "less than about" in claim 3 renders the claim vague and indefinite. The phrase "less than about" renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "less than about". It is unclear what values are encompassed by the phrase "less than about". The examiner suggests that this phrase should be changed to "less than". "Claims reciting "less than about" are invalid for indefiniteness where there was close prior art

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and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

9. The term "visible" in instant claim 8 renders the claim vague and indefinite, since the visibility of a particle by the naked eye is dependent upon the person's vision. Specifically, a particle visible to one person may not be visible to a second person. Appropriate correction and/or clarification is required.

10. Instant claim 10 is rendered vague and indefinite, since it is unclear if the resulting composition must contain a neutralizing agent. Specifically, the examiner notes that the preamble of instant claim 10 recites that the neutralizing agent is in the composition, but asserts that the preamble of a claim is not given patentable weight (See MPEP 2111.02). The examiner suggests that instant claim 10 should be written in independent form reciting all of the limitations after the preamble of the claim. Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 4, 6, 7, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Welch, WO 92/05234.

Welch, WO 92/05234, discloses a cleaning composition for hair (see abstract) comprising 0.2-0.4% by weight of Carbopol 1342, 1.0% by weight of ethylene glycol distearate, 1.0-2.0% by weight of Dimethicone gum/fluid, 0.2% by weight of titanium dioxide, 4-7% by weight of an amphoteric polymer, 0.8-1% by weight of hydroxyethylcellulose, 0.3-0.5% by weight of xanthan gum, 0.1% by weight of EDTA, 1.0% by weight of a perfume, water, and adjunct ingredients, per the requirements of instant claims 1, 4, 6, 7, 8 and 9 (see Examples 1-5 on page 25). Therefore, instant claims 1, 4, 6, 7, 8 and 9 are anticipated by Welch, WO 92/05234.

13. Claims 1, 4-7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Thiel et al, U.S. Patent No. 5,344,643.

Thiel et al, U.S. Patent No. 5,344,643, discloses a shampoo composition (see abstract) comprising 0.1-1% by weight of Carbopol 1342, 0.5-2.0% by weight of soybean/coconut oil, 5.0% by weight of Merquat 550, 2.0% by weight of dimethicone/dimethicone copolyol, 0.9-1.5% by weight of triethanolamine, 1.0% by weight of ethylene glycol distearate, 0.7% by weight of a fragrance, water, and adjunct ingredients, per the requirements of instant claims 1, 4-7 and 9-10 (see Table 1, Examples 1-15). Furthermore, note that Thiel et al discloses that the carboxyvinyl

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polymer (i.e. Carbopol 1342) is neutralized with an agent, such as triethanolamine (see col. 5, line 65-col. 6, line 21), per the requirements of instant claim 10. Therefore, instant claims 1, 4-7, 9 and 10 are anticipated by Thiel et al, U.S. Patent No. 5,344,643.

14. Claims 1, 3 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mireille, FR 2,748,932.

Mireille, FR 2,748,932, discloses a hair dyeing composition (see abstract) comprising 0.1grams of a direct dye, 2.0 grams of an ethoxylated decyl alcohol with 5.3 moles of ethylene oxide, 1.0 grams of lauric acid, 5.0 grams of diethylene glycol monobutyl ether, 0.51 grams of PEMULEN TR1, 9.5 grams of 2-amino-2-methyl-1-propanol, and 100 grams of water, per the requirements of instant claims 1, 3 and 7-8 (see page 11, Example 1). Therefore, instant claims 1, 3 and 7-8 are anticipated by Mireille, FR 2,748,932.

15. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al, GB 2,315,771.

Yamamoto et al, GB 2,315,771, discloses an aqueous, non-foamable gel shaving composition comprising 0.1-5% by weight of a carboxyvinyl polymer, 0.005-2.0% by weight of a polymeric polyethylene oxide, and 0.01-5% by weight of a polyhydric alcohol, such as polypropylene glycol (see page 30, lines 1-9 & page 31, line 23, page 32, line 3), per the requirements of instant claims 1-2. Specifically, note Examples 1-11. Therefore, instant claims 1-2 are anticipated by Yamamoto et al, GB 2,315,771.

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16. Claims 1, 3-5, and 7-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Drzewiecki et al, WO 99/24010.

Drzewiecki et al, WO 99/24010, discloses a composition suitable for topical application to human hair (see abstract) comprising 4.0% by weight of glycerin, 0.150% by weight of Pemulen TR-1, .25% by weight of Steareth-2, 1.0% by weight of a solid sucrose polyester, 0.22% by weight of ethylene glycol distearate, 0.150% by weight of a fragrance, water, and adjunct ingredients, per the requirements of the instant invention (see page 14, Example 1). Also note page 16, Example 4, which discloses a composition comprising 2.0% by weight of mineral oil, 0.25% by weight of PEG 100-stearate, 1.5% by weight of petrolatum, 2.0% by weight of a solid sucrose polyester, 0.5% by weight of dimethicone fluid, 9.0% by weight of glycerin, 0.05% by weight of Carbopol 1382, 0.15% by weight of titanium dioxide, 1.0% by weight of dimethiconol fluid, 1.0% by weight of ethylene glycol distearate, water, and adjunct ingredients, per the requirements of instant claims 1, 3-5, and 7-9. Therefore, instant claims 1, 3-5, and 7-9 are anticipated by Drzewiecki et al, WO 99/24010.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk
June 21, 2003

Brian P. Mruk

Brian P. Mruk
Patent Examiner
Tech Center 1700